

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN M. HOBBY, JR.,

Plaintiff,

Case No. 1:06-cv-617

v

Hon. Wendell A. Miles

STATE OF MICHIGAN,

Defendant.

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ORDER DENYING MOTION FOR RECONSIDERATION

The *pro se* plaintiff in this case is John Hobby, a Michigan prisoner who was convicted of criminal sexual conduct in 1991. He has filed multiple habeas petitions challenging his conviction. See Hobby v. Phillips, No. 1:05cv204 (W.D. Mich.).<sup>1</sup> In this action, plaintiff seeks declaratory and injunctive relief on the basis that the Michigan statute under which he was convicted was passed in violation of the Michigan Constitution. The action was dismissed for failure to state a claim, and the matter is currently before the court on plaintiff's motion (docket no. 9) for reconsideration of that ruling. The motion is **denied**.

This action was dismissed on the basis that plaintiff's challenge to the legality of his

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<sup>1</sup>The court may take judicial notice of other actions plaintiff has filed in this court. See United States v. Doss, 563 F.2d 265, 269 (6<sup>th</sup> Cir. 1977) (taking judicial notice of court's own record is wholly consistent with the provisions of Fed.R.Evid. 201). The court may also take judicial notice of court records on file in other federal courts. See Granader v. Public Bank, 417 F.2d 75, 82 (6<sup>th</sup> Cir. 1969) ("Federal courts may take judicial notice of proceedings in other courts of record").

confinement is not the proper subject of a civil rights action under 42 U.S.C. § 1983. Plaintiff's current motion reargues the merits of his position. Plaintiff also argues that the court is guilty of wrongdoing if it does not adopt plaintiff's position.

Where a state prisoner challenges the fact or duration of his confinement on federal constitutional grounds, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from imprisonment, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Therefore, to the extent that plaintiff alleges that his federal constitutional rights were violated and that he is entitled to be released from prison, his claim is not cognizable under 42 U.S.C. § 1983, and the court did not err by dismissing the complaint. The fact that plaintiff has been denied habeas relief on at least two occasions does not alter this conclusion.<sup>2</sup>

It was proper to dismiss plaintiff's complaint based solely on the reasoning which the court has already applied. However, upon further review of plaintiff's complaint in connection with resolving the present motion, the court is convinced that additional considerations result in the same conclusion: that plaintiff's action is subject to dismissal.

It is not apparent that plaintiff is even alleging that his federal rights were violated; instead it appears that he might merely be alleging that the Michigan Constitution was violated in connection with the passage of the State's criminal sexual conduct statute. If this is the case, then the relief which plaintiff seeks is still unattainable in § 1983 proceedings. The court

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<sup>2</sup>In Hobby v. Phillips, the Sixth Circuit denied plaintiff's motion to file a third habeas petition.

cannot, in an action against state officials under 42 U.S.C. § 1983, force those officials to comply with state law. “[A] federal suit against state officials on the basis of state law contravenes the Eleventh Amendment when – as here – the relief sought and ordered has an impact directly on the State itself.” Pennhurst State Sch. and Hosp. v. Halderman, 465 U.S. 89, 117 (1984). The relief which plaintiff seeks – the invalidation of Michigan’s criminal sexual conduct statute – would directly impact the State, and is prohibited in this court by the Eleventh Amendment.

Moreover, to the extent that plaintiff seeks only declaratory relief, such relief is also inappropriate in this case. The Sixth Circuit has adopted a five-factor test to determine when a district court should exercise jurisdiction over a declaratory judgment: (1) whether the judgment would settle the controversy; (2) whether the declaratory judgment action would serve a useful purpose in clarifying the legal relations at issue; (3) whether the declaratory remedy is being used merely for the purpose of ‘procedural fencing’ or ‘to provide an arena for a race for res judicata’; (4) whether the use of a declaratory action would increase the friction between our federal and state courts and improperly encroach on state jurisdiction; and (5) whether there is an alternative remedy that is better or more effective. Adrian Energy Associates v. Michigan Public Service Com’n, 481 F.3d 414, 422 (6<sup>th</sup> Cir. 2007) (citation omitted). Here, each of these factors weighs heavily against exercising jurisdiction to grant declaratory relief, even if such jurisdiction could be asserted consistent with the Eleventh Amendment.

Finally, it is noted that even if plaintiff could overcome these deficiencies in his claim, this action would be time-barred. For civil rights suits filed in Michigan under § 1983, the statute of limitations is three years. See Mich. Comp. Laws § 600.5805(10); Carroll v.

Wilkerson, 782 F.2d 44, 45 (6th Cir. 1986). The statute of limitations period begins to run when the plaintiff knows or has reason to know that the act providing the basis of his injury has occurred. See Kullman v. Owens-Corning Fiberglas Corp., 943 F.2d 613, 616 (6th Cir. 1991) (finding that, under Michigan law, cause of action arose when the plaintiff knew or should have known that he was suffering lung difficulty and that he had worked in presence of asbestos, not when he eventually received official diagnosis of asbestos-exposure). Here, plaintiff was convicted in 1991. Before April 1, 1994, M.C.L. § 600.5851 defined imprisonment as a disability for statute of limitations purposes, meaning that a person had one year from the date of his release from prison to file an action. This statute was amended effective April 1, 1994 to remove imprisonment as a listed disability, allowing prisoners a one-year grace period from the effective date to file their actions. M.C.L. § 600.5851(9). Thus, the grace period expired on April 1, 1995. Plaintiff's action, filed on August 28, 2006, was filed over 11 years too late.

In his current motion, plaintiff also argues that the court erred in concluding that he had no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3). For the reasons noted above, there was and is no error, and the court adheres to its conclusion.

MOTION DENIED.

Entered this 6th day of June, 2007.

/s/ Wendell A. Miles  
Wendell A. Miles, Senior Judge